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SENATE BILL 1034

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO AUDITS; RAISING THE AMOUNT OF GROSS ANNUAL INCOME
REQUIRING AUDITS; REVISING STANDARDS FOR FINANCIAL REVIEWS OF
CERTAIN SCHOOL-RELATED ORGANIZATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-5A-1 NMSA 1978 (being Laws 1992,
Chapter 27, Section 1) is amended to read:

"6-5A-1. DEFINITIONS--REQUIREMENTS FOR GOVERNMENTAL
ENTITIES THAT RECEIVE FUNDS OR PROPERTY FROM CERTAIN
ORGANIZATIONS. --

A. As used in this section:

(1) "agency" means any state agency,
department or board, any public educational institution [~~of
higher education or public post-secondary educational
institution and~~] or any county, municipality or public school

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1 district;

2 (2) "organization" means an organization that
3 has been granted exemption from the federal income tax by the
4 United States commissioner of internal revenue as an
5 organization described in Section 501(c) of the Internal
6 Revenue Code of 1986, as amended or renumbered, and whose
7 principal and authorized purpose is to complement, contribute
8 to and support or aid the function of or forward the purposes
9 of a single agency through financial support [~~the~~] or
10 contribution of services, goods, data or information that help
11 or aid the agency in carrying out its statutory purpose and
12 goals, including [~~but not limited to~~] the provision of
13 scholarships to students of educational institutions and the
14 provision of grants to supplement ongoing research or to
15 provide funds for research and programs being carried out by an
16 agency;

17 (3) [~~"post-secondary~~] "public educational
18 institution" means an [~~educational institution designated in~~
19 ~~Article 12, Section 11 of the constitution of New Mexico and~~
20 ~~any post-secondary educational institution, which term includes~~
21 ~~but is not limited to an~~] academic, vocational, technical,
22 business, professional or other school, college or university
23 or other organization or person offering or purporting to offer
24 courses, instruction, training or education through
25 correspondence or in person to [~~any individual~~] a person within

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1 this state [~~over the compulsory school attendance age~~] beyond
2 the secondary educational level, if that [~~post secondary~~]
3 educational institution is directly supported in whole or in
4 part by state or local taxation; and

5 (4) "transferred" means given or otherwise
6 transferred, with or without consideration.

7 B. Prior to an agency accepting property or [~~funds~~]
8 money that [~~have~~] has been transferred to [~~an~~] the agency by an
9 organization, the agency and the organization shall enter into
10 a written agreement that includes at least the following:

11 (1) a concise statement of the organization's
12 purpose and of how that purpose is supportive of the agency's
13 statutory responsibilities and authority;

14 (2) provisions explicitly describing the
15 relationship of the agency to the organization in connection
16 with such issues as authority, autonomy and information sharing
17 and reporting;

18 (3) provisions defining the extent to which
19 the organization may complement and support functions that are
20 the statutory responsibility of the agency;

21 (4) requirements that the organization:
22 (a) if its gross annual income exceeds
23 [~~one hundred thousand dollars (\$100,000)~~] one hundred fifty
24 thousand dollars (\$150,000), have a financial accounting system
25 considered adequate under customarily and currently accepted

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1 accounting standards and that the financial affairs of the
2 organization be ~~[audited]~~ reviewed annually in accordance with
3 ~~[generally accepted governmental auditing]~~ American institute
4 of certified public accountants standards by ~~[an independent~~
5 ~~professional auditor]~~ a certified public accountant who would
6 be required to furnish to the agency copies of ~~[his]~~ the annual
7 audit, which, exclusive of any lists of donors or donations,
8 shall be a public record, and to make the associated working
9 papers available to the agency for review upon its written
10 request for a period of three years after the audit report
11 date; or

12 (b) if its gross annual income is ~~[one~~
13 ~~hundred thousand dollars (\$100,000)]~~ one hundred fifty thousand
14 dollars (\$150,000) or less, file a statement with the agency in
15 the form of a balance sheet showing the assets of the
16 organization, its liabilities, its income, classified by
17 general source, and its expenditures, classified by object;

18 (5) a provision requiring that any ~~[funds]~~
19 money or property transferred to ~~[an]~~ the agency by ~~[an]~~ the
20 organization be considered subject to all state laws and
21 ~~[regulations]~~ rules governing the disbursement and
22 administration of public funds and public property, except to
23 the extent of any specific conditions of the transfer that are
24 acceptable to the agency and do not require actions that are
25 punishable as crimes under state law;

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1 (6) a provision stating that the agency has
2 reviewed the bylaws of the organization and found them
3 acceptable and a provision requiring that the organization
4 furnish copies of the bylaws to the agency;

5 (7) a provision requiring specification of the
6 consideration that the agency received from the organization
7 for any agency services provided in support of the
8 organization; and

9 (8) a provision requiring the application by
10 the organization of the standard described in Section 6-8-10
11 NMSA 1978 as the standard for evaluating investments of the
12 organization.

13 C. The written agreement required by Subsection B
14 of this section is not required for each transfer but is a
15 precondition of an agency's acceptance of any transfers. The
16 agreement may be amended by mutual written agreement of the
17 agency and the organization.

18 D. Nothing in this section subjects an organization
19 to the provisions of the Open Meetings Act or makes its
20 records, other than the annual audit required under this
21 section, public records within the purview of [Sections]
22 Section 14-2-1 [~~through 14-2-3~~] NMSA 1978. "